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MONTANA LEGISLATIVE HISTORY

Chapter 491 1999

Bill H \_\_\_\_\_ S 33

Original bill & history ✓c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 3/09 \_\_\_\_\_ c

Hearing Date(s) 1/08 \_\_\_\_\_ c

3/19 \_\_\_\_\_ c

1/19 \_\_\_\_\_ c

3/26 \_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

\_\_\_\_\_ c

Date Out \_\_\_\_\_ c

Did this bill originate in an interim committee? \_\_\_\_\_ Yes \_\_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

S. Free Conference Committee  
4/13

} 1 hearing

H. Free Conference Committee  
4/13

## **LEGISLATIVE HISTORIES SINCE 1997**

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 32 Introduced by Grimes

LC0315 Drafter: MacMaster

Provide That Consent of a Victim of Sexual Assault or Sexual Intercourse Without Consent Is Ineffective If the Victim Is Incarcerated in an Adult or Juvenile Correctional, Detention, or Treatment Facility and the Perpetrator Is an Employee, Contractor, or Volunteer of the Facility and Has Supervisory or Disciplinary Authority over the Victim, Unless the Act Is Part of a Lawful Search;...

By Request of Department of Corrections

|       |                                                       |    |    |
|-------|-------------------------------------------------------|----|----|
| 12/07 | Introduced                                            |    |    |
| 12/22 | Referred to Judiciary                                 |    |    |
| 1/04  | 1st Reading                                           |    |    |
| 1/06  | Fiscal Note Requested                                 |    |    |
| 1/07  | Hearing                                               |    |    |
| 1/07  | Committee Executive Action--Bill Passed               | 9  | 0  |
| 1/07  | Committee Report--Bill Passed                         |    |    |
| 1/11  | Fiscal Note Received                                  |    |    |
| 1/11  | Fiscal Note Signed                                    |    |    |
| 1/11  | 2nd Reading Passed                                    | 34 | 16 |
| 1/12  | Fiscal Note Printed                                   |    |    |
| 1/12  | 3rd Reading Passed                                    | 39 | 11 |
|       | Transmitted to House                                  |    |    |
| 1/13  | Referred to Judiciary                                 |    |    |
| 1/19  | Hearing                                               |    |    |
| 1/22  | Tabled in Committee                                   |    |    |
| 2/05  | Taken from Table in Committee                         |    |    |
| 2/05  | Committee Executive Action--Bill Concurred as Amended | 14 | 6  |
| 2/05  | Committee Report--Bill Concurred as Amended           |    |    |
| 2/09  | 2nd Reading Concurred                                 | 85 | 15 |
| 2/09  | Reconsidered Previous Action;                         |    |    |
|       | Remains in 2nd Reading Process                        |    |    |
| 3/04  | 2nd Reading Concurred as Amended                      | 91 | 6  |
| 3/06  | 3rd Reading Concurred                                 | 93 | 6  |
|       | Returned to Senate with Amendments                    |    |    |
| 3/09  | 2nd Reading House Amendments Concurred                | 50 | 0  |
| 3/10  | 3rd Reading Passed as Amended by House                | 50 | 0  |
| 3/10  | Sent to Enrolling                                     |    |    |
| 3/11  | Returned from Enrolling                               |    |    |
| 3/12  | Signed by President                                   |    |    |
| 3/13  | Signed by Speaker                                     |    |    |
| 3/15  | Transmitted to Governor                               |    |    |
| 3/16  | Signed by Governor                                    |    |    |
| 3/17  | Chapter Number Assigned                               |    |    |
|       | Chapter Number 84                                     |    |    |
|       | Effective Date: 10/01/1999 - All Sections             |    |    |

SB 33 Introduced by F. Thomas

LC0339 Drafter: Lane

Generally Revise Laws Governing Prisons and Prisoners;...

By Request of Department of Corrections

|       |                       |
|-------|-----------------------|
| 12/07 | Introduced            |
| 12/22 | Referred to Judiciary |

## SENATE BILLS AND RESOLUTIONS

41

|      |                                                      |    |    |
|------|------------------------------------------------------|----|----|
| 1/04 | 1st Reading                                          |    |    |
| 1/04 | Fiscal Note Requested                                |    |    |
| 1/04 | Fiscal Note Received                                 |    |    |
| 1/05 | Fiscal Note Signed                                   |    |    |
| 1/06 | Fiscal Note Printed                                  |    |    |
| 1/08 | Hearing                                              |    |    |
| 1/19 | Committee Executive Action--Bill Passed as Amended   | 9  | 0  |
| 1/20 | Committee Report--Bill Passed as Amended             |    |    |
| 1/21 | 2nd Reading Passed                                   | 37 | 11 |
| 1/22 | 3rd Reading Passed                                   | 36 | 14 |
|      |                                                      |    |    |
|      | Transmitted to House                                 |    |    |
| 2/16 | Referred to Judiciary                                |    |    |
| 3/09 | Hearing                                              |    |    |
| 3/19 | Tabled in Committee                                  |    |    |
| 3/26 | Taken from Table in Committee                        |    |    |
| 3/26 | Committee Executive Action--Bill Concurred           | 10 | 9  |
| 3/27 | Committee Report--Bill Concurred                     |    |    |
| 3/29 | 2nd Reading Concurred as Amended                     | 73 | 25 |
| 3/31 | 3rd Reading Concurred                                | 85 | 14 |
|      |                                                      |    |    |
|      | Returned to Senate with Amendments                   |    |    |
| 4/07 | 2nd Reading House Amendments Concurred               | 49 | 0  |
| 4/07 | Segregated from Committee of the Whole Report        | 49 | 0  |
| 4/08 | 2nd Reading House Amendments Not Concurred           | 50 | 0  |
| 4/09 | Free Conference Committee Appointed                  |    |    |
| 4/13 | Hearing                                              |    |    |
| 4/13 | Free Conference Committee Report Received            |    |    |
| 4/14 | 2nd Reading Free Conference Committee Report Adopted | 50 | 0  |
| 4/15 | 3rd Reading Free Conference Committee Report Adopted | 49 | 1  |
|      |                                                      |    |    |
|      | House                                                |    |    |
| 4/10 | Free Conference Committee Appointed                  |    |    |
| 4/13 | Free Conference Committee Report Received            |    |    |
| 4/15 | 2nd Reading Free Conference Committee Report Adopted | 81 | 18 |
| 4/16 | 3rd Reading Free Conference Committee Report Adopted | 87 | 9  |
|      |                                                      |    |    |
| 4/16 | Sent to Enrolling                                    |    |    |
| 4/19 | Returned from Enrolling                              |    |    |
| 4/20 | Signed by President                                  |    |    |
| 4/21 | Signed by Speaker                                    |    |    |
| 4/22 | Transmitted to Governor                              |    |    |
| 4/27 | Signed by Governor                                   |    |    |
| 4/29 | Chapter Number Assigned                              |    |    |
|      | Chapter Number 491                                   |    |    |
|      | Effective Date: 4/27/1999 - All Sections             |    |    |

SB 34 Introduced by Jergeson

LC0633 Drafter: Petesch

Clarify Only Loans to the General Fund must Be Repaid with Interest and That a General Fund Loan for Budget Amendment Purposes Does Not Constitute a Significant Ascertainable Commitment of Present General Fund Support;...

By Request of Legislative Finance Committee

|       |                                |
|-------|--------------------------------|
| 12/07 | Introduced                     |
| 12/22 | Referred to Finance and Claims |
| 1/04  | 1st Reading                    |

## SENATE BILL NO. 33

INTRODUCED BY THOMAS F

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING PRISONS AND PRISONERS; CLARIFYING THAT A PRIVATE PRISON FACILITY LICENSED BY THE DEPARTMENT OF CORRECTIONS IS A STATE PRISON; CLARIFYING THE PROCEDURE FOR THE ISSUANCE OF A LICENSE TO A PRIVATE PRISON FACILITY; CLARIFYING THAT A PRIVATE PRISON IS NOT A REGIONAL CORRECTIONAL FACILITY; CLARIFYING THAT A PRIVATE PRISON MAY HOUSE ONLY INMATES CHARGED OR CONVICTED IN MONTANA UNLESS THE INMATE IS HOUSED PURSUANT TO THE WESTERN INTERSTATE CORRECTIONS COMPACT OR THE INTERSTATE CORRECTIONS COMPACT AND THE DEPARTMENT OF CORRECTIONS APPROVES THE PLACEMENT; CLARIFYING THAT FOR PURPOSES OF DETERMINING AGGRAVATING CIRCUMSTANCES IN CRIMINAL CASES CERTAIN CRIMES COMMITTED IN FACILITIES OTHER THAN THE STATE PRISON IN DEER LODGE APPLY; AMENDING SECTIONS 1-1-207, 19-8-301, 45-8-318, 46-18-220, 46-18-303, 46-19-103, 46-23-201, 46-23-215, 46-23-217, 53-1-102, 53-1-103, 53-1-104, 53-1-108, 53-1-202, 53-30-101, 53-30-132, 53-30-151, 53-30-503, 53-30-603, AND 87-2-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-1-207, MCA, is amended to read:

"1-1-207. **Miscellaneous terms.** ~~{}~~ Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

~~{a)}~~ (1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person's action, vote, or opinion in any public or official capacity.

~~{b)}~~ ~~"Montana state prison" means the Montana state prison as defined in 53-30-101(3)(b).~~

~~{c)}~~ (2) "Peace officer" has the meaning as defined in 46-1-202.

~~(d) "State prison" or "prison" means:~~

~~(i) the Montana state prison as described in 53-30-101(1);~~

~~(ii) the Montana women's prison as defined in 53-30-101(3)(c);~~

~~(iii) a Montana regional correctional facility;~~

~~(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or~~

~~(v) a combination of the facilities listed in this subsection (1)(d).~~

~~(e)(3)~~ "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

~~(2) Subsections (1)(b) and (1)(d) do not authorize a court to sentence a person to a correctional facility listed in those subsections."~~

**Section 2.** Section 19-8-301, MCA, is amended to read:

**"19-8-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) ~~the warden~~ wardens and deputy wardens ~~of the state prison system~~ employed by the department of corrections;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the

right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 3.** Section 45-8-318, MCA, is amended to read:

**"45-8-318. Possession of deadly weapon by prisoner or youth in facility.** (1) A person commits the offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon while the person is:

(a) a person committed to ~~the Montana~~ a state prison or incarcerated in a county jail, city jail, or regional jail and is:

(i) at ~~the~~ a state prison, a state prison farm or ranch, or jail;

(ii) being conveyed to or from a place listed in this subsection (1)(a); or

(iii) under the custody of prison or jail officials, officers, or employees; or

(b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.

(2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more than \$50,000, or by both fine and imprisonment.

(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in district court, in which case the district court has jurisdiction."

**Section 4.** Section 46-18-220, MCA, is amended to read:

**"46-18-220. Sentences for certain offenses committed in state prison -- death penalty.** A person serving a sentence of imprisonment in ~~the~~ a state prison convicted of the offense of attempted deliberate

1 homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at ~~the~~ a state  
2 prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

3  
4 **Section 5.** Section 46-18-303, MCA, is amended to read:

5 **"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

6 (1) The offense was deliberate homicide and was committed by a person serving a sentence of  
7 imprisonment in ~~the~~ a state prison.

8 (2) The offense was deliberate homicide and was committed by a defendant who had been  
9 previously convicted of another deliberate homicide.

10 (3) The offense was deliberate homicide and was committed by means of torture.

11 (4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

12 (5) The offense was deliberate homicide and was committed as a part of a scheme or operation  
13 that, if completed, would result in the death of more than one person.

14 (6) The offense was deliberate homicide as defined in 45-5-102 (1)(a), and the victim was a  
15 peace officer killed while performing the officer's duty.

16 (7) The offense was aggravated kidnapping that resulted in the death of the victim or the death  
17 by direct action of the defendant of a person who rescued or attempted to rescue the victim.

18 (8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping  
19 committed while incarcerated at ~~the~~ a state prison by a person who has been previously:

20 (a) convicted of the offense of deliberate homicide; or

21 (b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the  
22 convictions was for an offense against the person in violation of Title 45, chapter 5, for which the  
23 minimum prison term is not less than 2 years.

24 (9) The offense was deliberate homicide and was committed by a person during the course of  
25 committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the  
26 victim was less than 18 years of age.

27 (10) The offense was sexual intercourse without consent and the defendant has a previous  
28 conviction of sexual intercourse without consent in this state or of an offense under the laws of another  
29 state or of the United States that if committed in this state would be the offense of sexual intercourse  
30 without consent and the defendant inflicted serious bodily injury upon a person in the course of



1 committing each offense."

2  
3 Section 6. Section 46-19-103, MCA, is amended to read:

4 "46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court  
5 shall set the date of execution, which may not be less than 30 days or more than 60 days from the date  
6 the sentence is pronounced. If execution has been stayed by any court and the date set for execution has  
7 passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall,  
8 upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from  
9 the day the date is set. The defendant is entitled to be present in court on the day the new date of  
10 execution is set.

11 (2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~the~~ the  
12 Montana state prison or the Montana women's prison for confinement, and the state shall bear the costs  
13 of imprisoning the defendant from the date of delivery.

14 (3) The punishment of death must be inflicted by administration of a continuous, intravenous  
15 injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic  
16 agent until a licensed physician pronounces that the defendant is dead according to accepted standards  
17 of medical practice.

18 (4) When an execution date is set, a death warrant signed by the judge and attested by the clerk  
19 of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy  
20 of the judgment must be delivered to the director of the department of corrections. The warrant must be  
21 directed to the director and recite the conviction, judgment, appointed date of execution, and duration  
22 of the warrant.

23 (5) The warden of the Montana state prison shall provide a suitable and efficient room or place  
24 in which executions will be carried out, enclosed from public view, within the walls of the state prison,  
25 and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6),  
26 select the person to perform the execution, and the warden or the warden's designee shall supervise the  
27 execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and  
28 training of the executioner must remain confidential.

29 (6) An execution must be performed by a person selected by the warden and trained to administer  
30 a lethal injection. The person administering the injection need not be a physician, registered nurse, or

1 licensed practical nurse licensed or registered under the laws of this or any other state. The warden shall  
2 allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be  
3 executed.

4 (7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of  
5 the court from which it was issued, noting on the warrant the time it was executed."  
6

7 **Section 7. Section 46-23-201, MCA, is amended to read:**

8 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in  
9 subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person  
10 confined in ~~the Montana a state prison or the women's prison~~, except persons under sentence of death  
11 and persons serving sentences imposed under 46-18-202(2) or 46-18-219, when in its opinion there is  
12 reasonable probability that the prisoner can be released without detriment to the prisoner or to the  
13 community.

14 (2) A prisoner serving a time sentence may not be paroled under this section until the prisoner  
15 has served at least one-fourth of the prisoner's full term.

16 (3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has  
17 served 30 years.

18 (4) A parole may be ordered under this section only for the best interests of society and not as  
19 an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only  
20 when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding  
21 citizen."  
22

23 **Section 8. Section 46-23-215, MCA, is amended to read:**

24 **"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of  
25 ~~the correctional facility from which the prisoner was released~~ department but is subject to the orders of  
26 the board.

27 (2) When an order for parole is issued, it must recite the conditions of parole. If restitution was  
28 imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay  
29 restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain  
30 a clause waiving extradition.

(3) Whenever a prisoner in ~~the Montana~~ a state prison or ~~the Montana women's prison~~ has been approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the ~~warden~~ department may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the ~~prison~~ department and is subject to all other conditions recited by the board."

**Section 9.** Section 46-23-217, MCA, is amended to read:

**"46-23-217. Service of term for additional crime.** A prisoner who commits a crime while imprisoned in ~~the~~ a state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence."

**Section 10.** Section 53-1-102, MCA, is amended to read:

**"53-1-102. Removal of patients from state custodial institutions or correctional facilities without permission a misdemeanor.** (1) A person, other than a parent or one having legal custody of a patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution or correctional facility to leave the institution or facility without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding \$500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ state prison."

**Section 11.** Section 53-1-103, MCA, is amended to read:

**"53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions or correctional facilities a misdemeanor.** (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution or correctional facility without permission of the medical staff is guilty of a misdemeanor and,

1 upon conviction, is punishable by imprisonment in a county ~~jail~~ detention facility not exceeding 6 months  
2 or by a fine not exceeding \$500, or both.

3 (2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ state  
4 prison."

5  
6 **Section 12.** Section 53-1-104, MCA, is amended to read:

7 **"53-1-104. Release of arsonist -- notification of department of justice.** (1) Each of the following  
8 institutions, correctional facilities, or other facilities having the charge or custody of a person convicted  
9 of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written  
10 notification to the department of justice when the person is admitted or released by it:

11 (a) Montana state hospital;

12 (b) a ~~Montana~~ state prison;

13 (c) a Montana youth correctional facility; or

14 (d) a county or city detention facility.

15 (2) The notification must disclose:

16 (a) the name of the person;

17 (b) where the person is or will be located; and

18 (c) the type of fire the person was involved in."

19  
20 **Section 13.** Section 53-1-108, MCA, is amended to read:

21 **"53-1-108. Inmate financial disclosure and account monitoring.** (1) Upon incarceration at the  
22 ~~Montana a state prison in Deer Lodge or the women's prison in Billings,~~ an inmate shall:

23 (a) make full disclosure of all the inmate's accounts in financial institutions to the department of  
24 corrections in writing and under oath;

25 (b) sign a release authorizing any financial institution in which the inmate has an account of any  
26 kind to provide the department with copies of records of any transaction in the account during the  
27 inmate's term of incarceration in the prison or correctional system. Released copies of records are  
28 confidential criminal justice information as defined in 44-5-103.

29 (c) sign a release authorizing the department to monitor any inmate account in a financial  
30 institution.

(2) Failure of an inmate to disclose information under subsection (1)(a) or sign a release under subsection (1)(b) or (1)(c) is an offense under 45-7-302."

Section 14. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the ~~Montana state prison~~ prisons listed in 53-30-101;

~~(b) the Montana women's prison; and~~

~~(c)~~ (b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the ~~Montana state prison~~ prisons listed in 53-30-101;

1 ~~(b) the Montana women's prison;~~

2 ~~(c)~~(b) appropriate community-based programs for the placement, supervision, and rehabilitation  
3 of adult felons who meet the criteria developed by the department for placement:

4 (i) in prerelease centers;

5 (ii) under intensive supervision;

6 (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

7 (iv) in other appropriate programs;

8 (c) the boot camp authorized by 53-30-403; and

9 (d) the forensic unit at Warm Springs.

10 (3) Youth correctional services consist of the following correctional facilities or programs to  
11 provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in  
12 need of intervention pursuant to Title 52, chapter 5:

13 (a) Pine Hills youth correctional facility or other state youth correctional facility; and

14 (b) any other facility or program that provides custody and services for delinquent youth.

15 (4) A state institution or correctional facility may not be moved, discontinued, or abandoned  
16 without the consent of the legislature."

17  
18 Section 15. Section 53-30-101, MCA, is amended to read:

19 "53-30-101. Location and function of prisons -- definitions. (1) The correctional facility at Deer  
20 Lodge is the Montana state prison and its primary function is to provide for the custody, treatment,  
21 training, and rehabilitation of adult male criminal offenders. ~~The custody, treatment, training, and~~  
22 ~~rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction~~  
23 ~~pursuant to an agreement as provided in 53-30-106.~~

24 (2) The correctional facility located in Billings is the Montana women's prison, and its primary  
25 function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal  
26 offenders.

27 (3) As used in this title, unless the context indicates otherwise, the following definitions apply:

28 (a) "Montana state prison" means the correctional facility located at Deer Lodge.

29 (b) "Montana women's prison" or "women's prison" means the correctional facility located at  
30 Billings.

1 ~~(a)(c)~~ "Montana State prison" means:

2 (i) the Montana state prison;

3 (ii) the Montana women's prison;

4 (iii) a Montana regional correctional facility;

5 (iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to

6 53-30-106; or

7 (v) a private prison facility licensed by the department of corrections; or

8 (v)(vi) a combination of the facilities listed in this subsection (3)(a)(c).

9 ~~(b) "Montana state prison" means:~~

10 ~~(i) the correctional facility located at Deer Lodge;~~

11 ~~(ii) a Montana regional correctional facility; or~~

12 ~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to~~

13 ~~53-30-106.~~

14 ~~(c) "Montana women's prison" or "women's prison" means:~~

15 ~~(i) the correctional facility located at Billings;~~

16 ~~(ii) a Montana regional correctional facility; or~~

17 ~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to~~

18 ~~53-30-106."~~

19  
20 Section 16. Section 53-30-132, MCA, is amended to read:

21 "53-30-132. Inmate participation and status in prison work programs -- prison industries and  
22 vocational training program -- wages and benefits. (1) The department of corrections may:

23 (a) establish prison industries that will result in the production or manufacture of products and  
24 the rendering of services that may be needed by any department or agency of the state or any political  
25 subdivision of the state, by any agency of the federal government, by any other states or their political  
26 subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in  
27 institutions;

28 (b) obtain federal certification of specific prison industries programs in order to gain access to  
29 interstate markets for prison industries products;

30 (c) contract with private industry for the sale of goods or components manufactured or produced

1 in shops under its jurisdiction and for the employment of inmates in federally certified prison industries  
2 programs;

3 (d) print catalogs describing goods manufactured or produced by prison industries and distribute  
4 the catalogs;

5 (e) fix the sale price for goods produced or manufactured by prison industries. Prices may not  
6 exceed prices existing in the open market for goods of comparable quality.

7 (f) require a correctional facility to purchase needed goods from other correctional facilities;

8 (g) provide for the repair and maintenance of property and equipment of institutions by inmates;

9 (h) provide for the removal of graffiti from property and equipment of institutions and the removal  
10 of litter from the property of institutions, public roads, and public parks by inmates;

11 (i) provide for construction projects, up to the aggregate sum of \$200,000 for each project,  
12 performed by inmates. The department of administration may:

13 (i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2,  
14 relating to construction, public bidding, bonding, or contracts; and

15 (ii) exempt inmates who provide labor for those projects from the labor and wage requirements  
16 of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a  
17 rate of pay as provided in subsection (5).

18 (j) provide for the repair and maintenance by prison industries of furniture and equipment of any  
19 state agency;

20 (k) provide for the manufacture by prison industries of motor vehicle license plates and other  
21 related articles;

22 (l) sell manufactured or agricultural products and livestock on the open market;

23 (m) provide for the manufacture by prison industries of highway, road, and street marking signs  
24 for the use of the state or any of its political subdivisions, except when the manufacture of the signs is  
25 in violation of a collective bargaining contract;

26 (n) pay an inmate from receipts from the sale of products produced or manufactured or services  
27 rendered in a program in which the inmate is working;

28 (o) collect 15% of the net wages paid to an inmate employed in a federally certified prison  
29 industries program for deposit in the Montana crime victims compensation and assistance account  
30 established under 53-9-109; and



1 (p) collect from an inmate employed in a federally certified prison industries program charges for  
2 room and board consistent with charges established by the director for inmates assigned to prerelease  
3 centers.

4 (2) Except as provided in subsection (3), furniture made in the prison may be purchased by state  
5 agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made  
6 furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms  
7 for sale to international markets.

8 (3) Any state institution, facility, or program operated by the department of corrections may  
9 purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter  
10 4.

11 (4) While engaged in on-the-job training and production, inmates not employed in a federally  
12 certified prison industries program may be paid a wage in accordance with subsection (5). Inmates  
13 employed in a federally certified prison industries program must be paid as provided in subsection (5).

14 (5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be  
15 based on the following criteria:

16 (i) knowledge and skill;

17 (ii) attitude toward authority;

18 (iii) physical effort;

19 (iv) responsibility for equipment and materials; and

20 (v) regard for safety of others.

21 (b) The maximum rate of pay must be determined by the appropriation established for the  
22 program, except that an inmate employed in a federally certified prison industries program must be paid  
23 at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

24 (6) Premiums for workers' compensation and occupational disease coverage for federally certified  
25 prison industries programs must be paid by the prison industries program or by the department of  
26 corrections. If the department of corrections pays the premium, reimbursement for premium payments  
27 for workers' compensation and occupational disease coverage must be made to the department of  
28 corrections by the private company contracting with the federally certified prison industries program for  
29 services and products.

30 (7) Inmates not working in a federally certified prison industries training program are not

employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a ~~Montana~~ state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

**Section 17.** Section 53-30-151, MCA, is amended to read:

**"53-30-151. Prison maintenance by inmates.** An inmate of a ~~Montana~~ state prison may be required to:

(1) keep the living quarters assigned to that inmate clean and orderly;

(2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services."

**Section 18.** Section 53-30-503, MCA, is amended to read:

**"53-30-503. Definitions.** As used in this part, the following definitions apply:

(1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.

(2) "Department" means the department of corrections.

(3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(4) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(5) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

(6) "Regional correctional facility" means a correctional facility, except the Montana state prison,

1 the women's prison, a private prison licensed by the department, or the Swan River boot camp authorized  
2 by 53-30-403, designed, constructed, or operated under this part by a local governmental entity, a  
3 corporation, the department, or any combination of a local governmental entity, a corporation, and the  
4 department for the housing of convicted felons."

5  
6 Section 19. Section 53-30-603, MCA, is amended to read:

7 "53-30-603. Private correctional facilities -- confinable persons. (1) An individual, corporation,  
8 partnership, association, or other private organization or entity may not construct ~~or operate~~ a private  
9 correctional facility unless licensed authorized by the department. ~~A license is nontransferable.~~

10 (2) An individual, corporation, partnership, association, or other private organization or entity may  
11 not operate a private correctional facility unless licensed by the department. A license is nontransferable.

12 ~~(2)(3)~~ (3) A person charged or convicted in another state or charged or convicted in federal court may  
13 not be confined in ~~the portion of~~ a private correctional facility ~~in this state that is used for the~~  
14 ~~incarceration of convicted felons for a term of over 1 year~~ unless the confinement is under and governed  
15 by Title 46, chapter 19, part 3 or 4, and the department authorizes the placement of the inmate at the  
16 private prison facility."

17  
18 Section 20. Section 87-2-802, MCA, is amended to read:

19 "87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care  
20 facilities, nursing care facilities, personal care facilities, and community homes for persons with  
21 disabilities. (1) Any veteran who is a patient residing at a hospital operated by the department of veterans  
22 affairs, within or outside the state, and residents of all ~~correctional facilities and~~ institutions under the  
23 jurisdiction of ~~the department of corrections and~~ the department of public health and human services,  
24 ~~except the Montana state prison at Deer Lodge or the Montana women's prison,~~ may fish without a  
25 license. The residents shall carry a permit on a form prescribed by the department and signed by the  
26 superintendent of the institution in lieu of a license.

27 (2) Upon annual application by managers or directors of licensed long-term care facilities and  
28 personal care facilities as defined in 50-5-101, community homes for persons with developmental  
29 disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed  
30 under 52-4-203, the department shall allow supervised residents to fish without the otherwise required

1 license during any activities approved by the facilities and homes."

2  
3 **NEW SECTION. Section 21. Effective date.** [This act] is effective on passage and approval.

4  
5 **NEW SECTION. Section 22. Retroactive applicability.** The amendments to 53-30-603 apply  
6 retroactively, within the meaning of 1-2-109, to all occurrences on or after July 1, 1998.

7 - END -

# FISCAL NOTE

Bill #: SB0033.01

Title: Generally revise laws governing prisons and prisoners

Primary Sponsor: Fred Thomas

Status: As introduced

Fred Thomas 1/5/99  
Sponsor Signature Date

Dave Lewis 1-4-99  
Dave Lewis, Budget Director Date

## Fiscal Summary

|                                            | <u>FY2000<br/>Difference</u> | <u>FY2001<br/>Difference</u> |
|--------------------------------------------|------------------------------|------------------------------|
| <b>Expenditures:</b>                       |                              |                              |
| General Fund                               | \$0                          | \$0                          |
| State Special Revenue                      | 0                            | 0                            |
| Federal Special Revenue                    | 0                            | 0                            |
| Other                                      | 0                            | 0                            |
| <b>Revenue:</b>                            |                              |                              |
| General Fund                               | \$0                          | \$0                          |
| State Special Revenue                      | 0                            | 0                            |
| Federal Special Revenue                    | 0                            | 0                            |
| Other                                      | 0                            | 0                            |
| <b>Net Impact on General Fund Balance:</b> | <b>\$0</b>                   | <b>\$0</b>                   |

| <u>Yes</u> | <u>No</u> |                                  | <u>Yes</u> | <u>No</u> |                               |
|------------|-----------|----------------------------------|------------|-----------|-------------------------------|
|            | X         | Significant Local Gov. Impact    |            | X         | Technical Concerns            |
| X          |           | Included in the Executive Budget | X          |           | Significant Long-Term Impacts |

## Fiscal Analysis

### ASSUMPTIONS:

- The purpose of this bill is to clarify numerous provisions of substantive law, including that: only wardens who are employed by the Department of Corrections (DOC) are eligible for membership in the game

SB 33

(continued)

wardens' and peace officers' retirement system; a private prison licensed by the State of Montana is considered a state prison; private correctional facilities cannot be constructed without authorization by the department; that private correctional facilities can not operate in Montana unless licensed by the department; and that a private prison may house only inmates charged or convicted in Montana, unless the inmate is housed pursuant to the Western Interstate Corrections Compact or the Interstate Corrections Compact and the department approves the placement.

2. These clarifications do not create a fiscal impact for the DOC.

**FISCAL IMPACT:**

None

**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

**- Committee: (S) Judiciary -**

04:57 PM

- SB 27**      **SPONSOR:** Hertel, John      **SHORT TITLE:** Revise telemarketing registration and fraud prevention act  
                 **REFERRED ON:** 12/22/1998  
                 **FINAL DISPOSITION** 04/20/1999 Chapter Number Assigned
- 
- SB 32**      **SPONSOR:** Grimes, Duane      **SHORT TITLE:** Crime for sexual contact with incarcerated person  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 12/22/1998      **HEARD ON:** 01/07/1999  
                 **EXECUTIVE ACTION:** 01/07/1999 Bill Passed -- VOTE: 9 - 0  
                 **FINAL DISPOSITION** 03/17/1999 Chapter Number Assigned
- 
- SB 33**      **SPONSOR:** Thomas, Fred      **SHORT TITLE:** Generally revise laws governing prisons & prisoners  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 12/22/1998      **HEARD ON:** 01/08/1999      (S) Discussed in Committee ON: 01/14/1999  
                 **EXECUTIVE ACTION:** 01/19/1999 Bill Passed as Amended -- VOTE: 9 - 0  
                 **FINAL DISPOSITION** 04/29/1999 Chapter Number Assigned
- 
- SB 36**      **SPONSOR:** Keenan, Bob      **SHORT TITLE:** Malpractice immunity for free health care clinics  
                 **REFERRED ON:** 01/19/1999      **HEARD ON:** 01/27/1999  
                 **EXECUTIVE ACTION:** 02/01/1999 Bill Passed as Amended -- VOTE: 8 - 1  
                 **FINAL DISPOSITION** 04/22/1999 Chapter Number Assigned
- 
- SB 41**      **SPONSOR:** Taylor, Mike      **SHORT TITLE:** Term limits for judges  
                 **REFERRED ON:** 12/22/1998  
                 **FINAL DISPOSITION** 03/01/1999 (S) Missed Deadline for General Bill Transmittal
- 
- SB 42**      **SPONSOR:** Taylor, Mike      **SHORT TITLE:** Change supreme court justice's term of office  
                 **REFERRED ON:** 12/22/1998  
                 **FINAL DISPOSITION** 03/01/1999 (S) Missed Deadline for General Bill Transmittal
- 
- SB 54**      **SPONSOR:** Halligan, Mike      **SHORT TITLE:** Revise youth court act  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 12/22/1998      **HEARD ON:** 01/06/1999  
                 **EXECUTIVE ACTION:** 01/14/1999 Bill Passed as Amended -- VOTE: 9 - 0  
                 **FINAL DISPOSITION** 05/04/1999 Chapter Number Assigned
-

MINUTES

MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 08,  
1999 at 9:00 A.M., in Room 108 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB20, SB22, SB33  
Executive Action: None

HEARING ON SB 22

Sponsor: SEN. ARNIE MOHL, SD 39, Kalispell,

Proponents: Rick Day, Director of the Department of  
Corrections  
Craig Reap, Montana Highway Patrol  
Tom Schneider, Montana Public Employees Assoc.

Opponents: None



SEN. DOHERTY raised a concern in allowing parole and revocation hearings via videoconference. Ms. Fox responded that the reality is that the board is made up of voluntary citizens. Technology can provide a good hearing. There is an advantage to having the entire board watch the hearing via videoconference as opposed to having a member of the board provide a review.

*{Tape : 1; Side : B; Approx. Time Counter : 9.43}*

SEN. JABS questioned who would have the final decision if an inmate challenged the contents removed from a file. Mr. Thomas believed that the challenge would be through the court system. The court would determine whether the documents held back were appropriate.

He added that 99% of the revocation hearings are held at the Montana State Prison. All offenders that are returned to custody appear before the board.

SEN. GRIMES inquired about the procedure involved following the staff's research and report and the board's decision. Mr. Thomas explained that after researching the case and conducting the interview with the offender, recommended case disposition is filed outlining the exact reasons for denial or in the case of parole, a disposition outlining the preconditions and/or conditions of parole. The board members sign the disposition.

CHAIRMAN GROSFIELD asked if the two auxiliary members were involved as often as the regular members. Mr. Thomas affirmed that they were.

SEN. BARTLETT understood that the auxiliary board members were alternates in the event that one of the regular board members was unable to be present at the hearing. Mr. Thomas affirmed and added that due to the caseload the auxiliary board members are involved in hearings every month.

Closing by Sponsor:

*{Tape : 2; Side : A; Approx. Time Counter : 9.50}*

SEN. SHEA closed on SB20. She remarked that this legislation is to provide the board with the tools necessary to handle a very overwhelming job.

HEARING ON SB 33

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: Rick Day, Director of the Department of Corrections

Opponents: None

Opening by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, introduced SB33 at the request of the Department of Corrections. This legislation clarifies that a private prison may not be constructed without authorization by the Department of Corrections. It may not be operated without a license from the department. It also closes the loophole in law prohibiting inmates, other than Montana inmates, from being housed in a private prison. Section 19 addresses the fact that a private correctional facility cannot be constructed unless it is authorized by the department. The licensing is not transferable. Line 15 on page 15 refers to Title 46, chapter 19, part 3 or 4, which involves an interstate compact established throughout the country which provides that if there is a prisoner in Montana that may be in life-threatening danger, that prisoner can be transferred to another state. Another state could transfer a prisoner here for the purpose of protecting that individual's life or health. Page 3 line 13 strikes the words "the Montana" and inserts the word "a" in reference to the state prisons.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 10:00}

Rick Day, Director of the Department of Corrections, remarked that this legislation is a clean up bill. The two significant issues in the bill are to clear up possible interpretations that may occur when selecting a private prison provider in the state and the confusion over the licensing process. During the process of consideration for a private prison, construction can be authorized but before there is operation licensing is necessary. Also, this legislation addresses the potential loophole regarding federally convicted inmates being brought into the private prison in Montana. Director Day provided his written testimony, EXHIBIT(5).

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DOHERTY asked why an operational license was transferable and a construction license was not. This language is found in Section 19, page 15, lines 9-11. Director Day stated that this is the confusion that they are trying to correct. There is no

license to construct. There is a selection process where a contractor is selected and the department authorizes the construction. Once the facility is completed and ready for inspection, the facility and the operator are licensed for operation. This involves two separate and distinct processes and two actual contracts which include a contract to construct and a contract to operate.

**SEN. DOHERTY** questioned whether the court made a distinction between the two in the case filed regarding the prison facility in Shelby. **Director Day** remarked that the court did not accept the argument. They couldn't license because they didn't have an existing building and they couldn't authorize because they didn't have a license.

**Scott Crichton, ACLU**, stated that his understanding is that Corrections Corp. of America has several corporations to include a land corporation that purchases the land and is separate from the operational corporations. Corrections Corp. was making plans to dissolve the old corporation as of one minute after midnight on January 1st and reinstalling a new corporation and then taking a fine prorated over one minute. He added that he would provide the committee with his file on this matter.

**SEN. BARTLETT** asked if US Corrections Corporation bought out Corrections Corporation of America would US Corrections Corporation need a license from the department. **Director Day** responded that they would need to be licensed and approved by the department.

**SEN. BARTLETT** asked if a corporation was interested in building a private prison and had no intention of contracting with the department, would the department's authorization be necessary to building the prison. **Director Day** stated that it would and this is the clear intention of the process. It must be approved by the department.

January 8, 1999  
Comments  
Rick Day, Director  
Department of Corrections  
Senate Judiciary Committee  
SB 33

Mr. Chairman and Members of the Senate Judiciary Committee: My name is Rick Day, and I am the Director of the Department of Corrections. I appear before the Committee today in Support of SB 33.

The 55th Legislature authorized and provided the regulatory framework for private corrections in Montana through HB 83. This legislation has been very effective in directing the Department's selection of Montana's first private prison. However, in the process of selecting and contracting a private prison provider, we discovered some language which needs clarification.

SB 33 is intended generally to clean up references to private and state prisons. Consequently, much of the bill contains one- or two-word changes. However, the most important sections of this bill can be found in Section 19.

1. Clarification about authorization to begin construction, and subsequent operation only if licensed by the Department. Some interpretations of this section read that the current language requires a license prior to construction.
2. Clarification that only offenders convicted in Montana be housed at private correctional facilities in Montana. The law could presently be interpreted to allow a private facility to house offenders convicted in federal court.

These changes essentially clean up HB 33, and now that the state will have a private prison, makes sure related sections apply where appropriate. Most importantly, the bill reinforces the language adopted by the 55th Legislature to prohibit housing out-of-state inmates in a private prison except through the interstate compact as approved by the Department.

We would like to thank Senator Thomas for agreeing to sponsor the legislation which at times has been a controversial issue, and we encourage the Committee's support of SB 33.

DATE 1-8-99

[illegible]

DATE 1-8-99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 20-22-33

< ■ > PLEASE PRINT < ■ >

Check One

| Name                 | Representing                            | Bill No.  | Support  | Oppose |
|----------------------|-----------------------------------------|-----------|----------|--------|
| <u>Craig Thomas</u>  | <u>BOARD OF PARDONS &amp; PENCE</u>     | <u>20</u> | <u>—</u> |        |
| <u>Don Schneider</u> | <u>MPER</u>                             | <u>22</u> |          |        |
| <u>Kimberly</u>      | <u>Govs office</u>                      | <u>20</u> |          |        |
| <u>Mary Jay</u>      | <u>JOC</u>                              | <u>22</u> | <u>—</u> |        |
| <u>MARK LEAHY</u>    | <u>Montana Police Protective ASSOC.</u> | <u>22</u> | <u>✓</u> |        |
| <u>LOIS ADAMS</u>    | <u>Correction</u>                       | <u>33</u> |          |        |
|                      |                                         |           |          |        |
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|                      |                                         |           |          |        |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

## MINUTES

### MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on January 19, 1999 at 9:00 A.M., in Room 325 Capitol.

#### ROLL CALL

##### Members Present:

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 155, SB 190, SB 191, SB 201, 1/17/1999

Executive Action: SB 190, SB 191, SB 201, SB 33, SB 152

#### HEARING ON SB 155

Sponsor: SEN. DALE BERRY, SD 30, Hamilton

Proponents: Zane Sullivan, Montana Association of Realtors  
Rod Wilson, Montana Association of Realtors  
Steven Mandeville, Real Estate Licensee

Opponents: Al Smith, Montana Trial Lawyers Association

Keating v. Sherlock. This bill will clarify the statute so that jeopardy attaches when the jury panel is sworn.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. MCNUTT closed on SB 201.

{Tape : 1; Side : B; Approx. Time Counter : 10.02}

EXECUTIVE ACTION ON SB 190

Motion/Vote: SEN. DOHERTY MOVED THAT SB 190 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 191

Motion/Vote: SEN. DOHERTY MOVED THAT SB 191 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 201

Motion/Vote: SEN. DOHERTY MOVED THAT SB 201 DO PASS. The motion carried unanimously. (9-0)

EXECUTIVE ACTION ON SB 33

Ms. Lane explained that the amendments SB003304.avl EXHIBIT(3) have been agreed to by the Department of Corrections. The bill as originally drafted put in a definition of regional correctional facility that it did not include a private prison licensed by the department. The reason they wanted the language is because they did want private prisons that may run a regional correctional facility to be licensed by the department. This was in direct conflict with existing language in the code that stated that private correctional facilities can include a regional correctional facility. The intent was that they wanted the bill to state that a regional correctional facility, if it is run by a private entity, would have to be licensed and authorized by the Department of Corrections. The amendments amend the definition of regional correctional facilities and the laws relating to regional correctional facilities to make it very clear that if a regional correctional facility is run, owned, or operated by a private entity they need to have the construction approved and the operation has to be licensed by the Department of Corrections.

Motion: SEN. HOLDEN MOVED TO AMEND SB 33.



**Discussion:**

**SEN. GRIMES** questioned whether this would place these correctional facilities under some additional state authority.

**CHAIRMAN GROSFIELD** explained that this bill states that non-resident inmates charged or convicted in other states cannot be housed in the state portion of these facilities. Amendment 10, page 3, states that a person charged or convicted in another state or charged or convicted in federal court may not be housed in the state correctional facility portion of a regional correctional facility unless a confinement is under and governed by the interstate corrections compact, and the department authorizes the placement of the person.

**CHAIRMAN GROSFIELD** further raised a concern regarding precluding the department from accepting any other inmates from out of state. He suggested that on page 3, subsection (10), the line beginning with "or 4, and" should be changed to "or 4, unless". This gives the department the ability to authorize other inmates if the need arises.

**SEN. MCNUTT** remarked that the covenant regarding the Shelby prison was that there would be no out-of-state prisons housed at that facility.

**CHAIRMAN GROSFIELD** commented that this language would state "unless the department authorizes".

**Diana Leibinger-Koch, Department of Corrections**, explained that the people at Shelby were assured that there would not be out-of-state inmates housed at the facility. It was the intent of Corrections Corporations of America (CCA) to try to have the ability to place out-of-state inmates there if the department did not fill the prison. The department had a problem with that because the administration and the Governor have a problem with placing out-of-state inmates in a correctional facility in this state.

The intent of the legislation last session was that out-of-state inmates would not be brought to Montana. Contract lawyers found a loophole which involved someone charged or convicted in federal court.

**SEN. HOLDEN** raised a concern with the possibility of bringing out-of-state prisoners into the state. He conceded that at some future date for economic reasons it may be necessary for a change in public policy. He added that the amendment would give the department the power to make a decision in this regard. He believed this to be a public policy decision which should be made

by the legislature if the time arose that out-of-state inmates were needed to fill the facilities.

**SEN. BARTLETT** believed that the section being referred to was limited to "regional correctional facilities" and not the entire private prison system. The provisions in place for a private prison would remain in place.

**CHAIRMAN GROSFIELD** affirmed. If the same change were to be made to private correctional facilities, a change would need to be made on page 15, line 15.

**SEN. BARTLETT** questioned if there was a contractual or legal provision which stated that state prisons would first be placed in the regional correctional facilities and only after the state's obligation to those facilities have been fulfilled would beds be taken in the private prison.

**Ms. Lane** stated that there may be contractual obligations but she was not aware of anything in statute. The Department of Corrections and the Governor gave a letter of intent to the group that was considering building a regional correctional facility in Butte. This letter of intent was that they would guarantee them a minimal number of state prisoners before the prisoners were sent to the private prison. She added that current law, and the amendments as drafted, when addressing federal prisons from being kept in the regional correctional facility, only place the restriction on the state-funded side of the regional correctional facility. The detention center side of the regional correctional facility can house the out-of-state prisons and federal prisons.

**Ms. Leibinger-Koch**, affirmed that the department did give the group from Butte a letter of intent in order for them to get financing for the project. That has since been rescinded. They will have a inmate population in the state for at least the next four years that will keep all the facilities full.

**SEN. HOLDEN** withdrew his motion.

#### EXECUTIVE ACTION ON SB 152

**Motion:** **SEN. GRIMES** moved that SB 152 BE AMENDED - SB0015202.avl EXHIBIT(4).

#### Discussion:

**SEN. GRIMES** explained that the amendments addressed concerns of the educational community. Amendment 1 would allow for parents to exclude their children from education the parents consider

**SEN. HALLIGAN** stated that he is guardian ad litem, the children's attorney, in about 40% of his caseload. He believes there was only one case in the last ten years where the Department of Family Services overstepped their bounds. In 99% of the cases, the facts were there to justify intervention. Bad parents would use fundamental rights in a way that is not intended by this legislation.

**SEN. JABS** commented that parents have rights under present law. This legislation may give unreasonable people more power than is intended.

**Vote:** The motion failed on roll call vote - 1 yes, 8 no.

**Motion/Vote:** **SEN. HALLIGAN MOVED THAT SB 152 BE TABLED.** The motion carried on roll call vote, 9-0.

Additional exhibit, Memo dated 1-18-99 from **Loren Frazier, School Administrators of Montana, EXHIBIT(6).**

#### **EXECUTIVE ACTION ON SB 33**

**SEN. BARTLETT** remarked that last session there was a concern that the private prison would not take precedence over the regional correctional facilities in terms of the placement of state prisoners. She question whether there was anything, either contractual or legal, which would establish the priority in which people would be assigned to the regional correctional facilities as opposed to the private prison.

**Rick Day, Director of the Department of Corrections,** responded that the regional prisons are a county/state cooperative. In the agreements, the department guarantees 50% of the state capacity. In the regional prisons they are both financially bound. If the county changes its mind, it would owe the state its investment. If the state were to change its mind, the county would inherent the property free and clear. These agreements were not made with the private firm.

**SEN. BARTLETT** questioned whether in the case that there were not enough prisoners to fill the 50% commitment to a regional correctional facility, would the department be paying as if the beds were filled. **Mr. Day** affirmed that would be the situation.

**Motion:** **SEN. HOLDEN MOVED TO AMEND SB 33 (SBOO3304.avl - EXHIBIT(5)).**

**CHAIRMAN GROSFIELD** commented that he had earlier suggested an amendment that would not allow prisoners on the state side unless

the department authorized the placement and it was approved by the appropriate authority. **Mr. Day** stated that their position is clear in that they told the public that they would not allow out-of-state inmates in these facilities. These prisons were to serve Montana inmates. The current process does not interfere with the sheriff's ability to operate the county detention side of the facility and contract as he deems appropriate. He believed this was a good structure.

**Vote:** The motion carried 8-1 with SEN. GROSFIELD voting "no".

**Motion/Vote:** SEN. MCNUTT MOVED THAT SB 33 DO PASS AS AMENDED.  
The motion carried unanimously, 9-0.

Exhibit # 3  
From ms. Lane  
The full exhibit is available from:  
Montana Historical Society Archives  
225 North Roberts  
PO Box 201201  
Helena, MT 59602-1201  
Phone: (406) 444-4775

(12 pgs)

1 No. 33

Committee

Lane

STATE BUDGET COMMITTEE  
EXHIBIT NO. 3  
DATE 1-19-99  
AL NO. SB33

1. Title, line 8 through line 9.

Following: "FACILITY;" on line 8

Strike: remainder of line 8 through "FACILITY;" on line 9

Insert: "CLARIFYING THE DEFINITION OF "REGIONAL CORRECTIONAL FACILITY"; CLARIFYING THAT PRIVATELY OPERATED OR PRIVATELY OWNED AND OPERATED REGIONAL CORRECTIONAL FACILITIES ARE SUBJECT TO DEPARTMENT AUTHORIZATION AND LICENSURE;"

2. Title, line 17.

Following: "53-30-503,"

Insert: "53-30-504, 53-30-507, 53-30-602,"

3. Page 11, line 4.

Following: "(iii)"

Insert: "a state correctional facility portion of"

4. Page 11, line 7.

Strike: "prison"

Insert: "correctional"

Following: "corrections"

Insert: "or a private correctional facility portion of a Montana regional correctional facility licensed by the department of corrections"

5. Page 14, line 30.

Following: "means a"

Strike: "correctional"

6. Page 14, line 30 through page 15, line 2.

Following: the second "facility" on page 14, line 30

Strike: remainder of line 30 through "53-30-403," on page 15, line 2

Insert: "for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is"

**There is no Exhibit 5 for SB 33; it is mislabeled in the minutes and should be labeled Exhibit 3.**

**Exhibit 5 is for SB 152**

## DATE \_\_\_\_\_

1-19-99

[illegible]



## SENATE STANDING COMMITTEE REPORT

January 19, 1999

Page 1 of 4

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 33** (first reading copy -- white) do pass as amended.

Signed:

A handwritten signature in cursive script, appearing to read "Lorents Grosfield".

*Senator Lorents Grosfield, Chair*

And, that such amendments read:

1. Title, line 8 through line 9.

**Following:** "FACILITY;" on line 8

**Strike:** remainder of line 8 through "FACILITY;" on line 9

**Insert:** "CLARIFYING THE DEFINITION OF "REGIONAL CORRECTIONAL FACILITY"; CLARIFYING THAT PRIVATELY OPERATED OR PRIVATELY OWNED AND OPERATED REGIONAL CORRECTIONAL FACILITIES ARE SUBJECT TO DEPARTMENT AUTHORIZATION AND LICENSURE;"

2. Title, line 17.

**Following:** "53-30-503,"

**Insert:** "53-30-504, 53-30-507, 53-30-602,"

3. Page 11, line 4.

**Following:** "(iii)"

**Insert:** "a state correctional facility portion of"

4. Page 11, line 7.

**Strike:** "prison"

**Insert:** "correctional"

**Following:** "corrections"

**Insert:** "or a private correctional facility portion of a Montana regional correctional facility licensed by the department of corrections"

Committee Vote:

Yes 9, No 0.

A handwritten signature, possibly "JR", in cursive script.

141210SC.srf



5. Page 14, line 30.

**Following:** "means a"

**Strike:** "correctional"

6. Page 14, line 30 through page 15, line 2.

**Following:** the second "facility" on page 14, line 30

**Strike:** remainder of line 30 through "53-30-403," on page 15, line 2

**Insert:** "for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is"

7. Page 15, line 4.

**Strike:** "for the housing of convicted felons"

8. Page 15, line 5.

**Following:** line 4

**"Section 19.** Section 53-30-504, MCA, is amended to read:

**"53-30-504. Authority to enter into contracts -- terms -- financing.** (1) The department may contract with one or more local governmental entities or corporations for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department.

(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity or the corporation, whichever is party to the contract. The contract must set forth fully the purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) The department may not enter into a contract unless the department and the local governmental entity or corporation has the legal authority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property that is owned by the state of Montana, a local governmental entity, or a corporation or that is jointly owned.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may be used, in whole or in part, to construct a regional correctional facility that may be owned and operated by a local governmental entity, whether or not the facility or any part of it is to be owned and operated by the

state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in whole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide that the local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and approval of the plans and specifications for the facility prior to the time the facility is let to bid.

(7) The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local governmental entities, corporations, or private providers to obtain the greatest number of beds that is consistent with program objectives for the least cost to the state.

(8) An individual, corporation, partnership, association, or other private organization or entity may not construct a regional correctional facility, if privately operated or privately owned and operated, unless authorized by the department.

(9) An individual, corporation, partnership, association, or other private organization or entity may not operate a regional correctional facility unless licensed by the department. A license is nontransferable.

(10) A regional correctional facility may house persons who are charged or convicted in this state, another state, or federal court in the detention center portion of a regional correctional facility. A person charged or convicted in another state or charged or convicted in federal court may not be confined in the a state correctional facility portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4, and the department authorizes the placement of the person in the state correctional facility portion of the regional correctional facility."

**Insert: "Section 20.** Section 53-30-507, MCA, is amended to read:

**"53-30-507. Rulemaking authority.** The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site, the department shall consider the need for a regional correctional facility in the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation. The department shall adopt rules that include the minimum applicable standards for the construction, operation, and physical condition of a state

correctional facility portion of a regional correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of a regional correctional facility. The rules must require that a privately operated or privately owned and operated state correctional facility portion of a regional correctional facility conform to applicable American correctional association and national commission on correctional health care standards."

**Insert:** "Section 21. Section 53-30-602, MCA, is amended to read:

"53-30-602. **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. ~~The term includes a regional correctional facility, as defined in 53-30-503, if privately operated or privately owned and operated.~~

(b) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22."

**Renumber:** subsequent sections

9. Page 15, line 16.

**Strike:** "prison"

**Insert:** "correctional"

10. Page 16, line 2.

**Insert:** "NEW SECTION. **Section 24. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

**Renumber:** subsequent sections

- END -

**INDEX TO BILLS IN COMMITTEE**

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

- SB 32**      **SPONSOR:** Grimes, Duane                      **SHORT TITLE:** Crime for sexual contact with incarcerated person  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 01/13/1999              **HEARD ON:** 01/19/1999  
                 **EXECUTIVE ACTION:** 02/05/1999 Bill Concurred as Amended -- VOTE: 14 - 6  
                 **TABLED ON:** 01/22/1999  
                 **FINAL DISPOSITION** 03/17/1999 Chapter Number Assigned
- 
- SB 33**      **SPONSOR:** Thomas, Fred                      **SHORT TITLE:** Generally revise laws governing prisons & prisoners  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/09/1999  
                 **EXECUTIVE ACTION:** 03/26/1999 Bill Concurred -- VOTE: 10 - 9  
                 **TABLED ON:** 03/19/1999  
                 **FINAL DISPOSITION** 04/29/1999 Chapter Number Assigned
- 
- SB 36**      **SPONSOR:** Keenan, Bob                      **SHORT TITLE:** Malpractice immunity for free health care clinics  
                 **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/02/1999  
                 **EXECUTIVE ACTION:** 03/26/1999 Bill Concurred as Amended -- VOTE: 15 - 2  
                 **TABLED ON:** 03/08/1999  
                 **FINAL DISPOSITION** 04/22/1999 Chapter Number Assigned
- 
- SB 54**      **SPONSOR:** Halligan, Mike                      **SHORT TITLE:** Revise youth court act  
                 **BY REQUEST OF:** Department Of Corrections  
                 **REFERRED ON:** 01/20/1999              **HEARD ON:** 01/26/1999  
                 **EXECUTIVE ACTION:** 03/04/1999 Bill Concurred as Amended -- VOTE: 16 - 3  
                 **FINAL DISPOSITION** 05/04/1999 Chapter Number Assigned
- 
- SB 60**      **SPONSOR:** Halligan, Mike                      **SHORT TITLE:** Allow District Court Judges to appoint standing masters  
                 **REFERRED ON:** 02/16/1999              **HEARD ON:** 03/04/1999  
                 **EXECUTIVE ACTION:** 03/08/1999 Bill Concurred as Amended -- VOTE: 15 - 3  
                 **FINAL DISPOSITION** 03/25/1999 Chapter Number Assigned
-

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN ROBERT C. CLARK, on March 9, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

#### ROLL CALL

**Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Dan McGee, Vice Chairman (R)  
Rep. Diana Wyatt, Vice Chairman (D)  
Rep. Chris Ahner (R)  
Rep. Shiell Anderson (R)  
Rep. Paul Clark (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Jore (R)  
Rep. Sam Kitzenberg (R)  
Rep. Brad Molnar (R)  
Rep. Mark Noennig (R)  
Rep. Jim Shockley (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 243, SB 33, SB 481, SB 250,  
3/2/1999

Sponsor:

Senator Thomas presented SB 243.

{Tape : 1; Side : B; Approx. Time Counter : 233 - 350}

Proponents:

John Larson, District Court Judge, Missoula

{Tape : 1; Side : B; Approx. Time Counter : 350 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 92}

EXHIBIT(1)

EXHIBIT(2)

EXHIBIT(3)

EXHIBIT(4)

Opponents:

None

Informational:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 92 - 380}

Closing by Sponsor:

Senator Thomas made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 380 - 407}

Rep. Hurdle wanted to ask another question of Judge Larson;

{Tape : 2; Side : A; Approx. Time Counter : 407 - 443}

HEARING ON SB 33

Sponsor:

Senator Thomas presented SB 33.

{Tape : 2; Side : A; Approx. Time Counter : 443 - 550}

EXHIBIT(5)

Proponents:

Rick Day, Dept. of Corrections

{Tape : 2; Side : B; Approx. Time Counter : 0 - 69}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 69 - 209}

Closing by Sponsor:

Senator Thomas made closing statements.

{Tape : 2; Side : B; Approx. Time Counter : 209 - 224}

HEARING ON SB 481

Sponsor:

Senator Thomas presented SB 481.

{Tape : 2; Side : B; Approx. Time Counter : 224 - 272}

Proponents:

Steve Everett, Youth Home Arrest Officer, Missoula

{Tape : 2; Side : B; Approx. Time Counter : 272 - 325}

John Larson, District Court Judge, Missoula

{Tape : 2; Side : B; Approx. Time Counter : 325 - 336}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 336 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 169}

Closing by Sponsor:

Senator Thomas made closing statements.

{Tape : 3; Side : A; Approx. Time Counter : 169 - 196}

HEARING ON SB 250

Sponsor:



EXHIBIT 5  
DATE 3/9/99  
SB 33

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

March 9, 1999

Mr. Chairman, members of the committee: For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, here today to raise concerns over this piece of legislation- SB 33.

I know the argument arose in the Senate on this bill- "we've already had our debate on private prisons last session. We've made our decision." In deed the decision was made. We initially made it with unilateral executive decisions that lead us down the ill-fated road to Spur, Texas and our blind date with the Bobby Ross Group. We ratified the direction of moving a core state function of corrections into the for profit world under intense pressure last session about wildly expanding prison population projections. And again last summer, after much lobbying, litigating, dissention and discussion, two out of three county commissioners in Shelby signed on to link their community's future with that of Corrections Corporation of America well into the new millennium.

You may recall also that the ink on the Shelby construction agreement was hardly dry when the DOC announced that their projections from the 1997 session, the projections upon which the necessity of privatized prisons were based, were in need of downward revision.

When this bill was heard in the Senate, I spoke as an informational witness regarding the year end merger that Corrections Corporation of America (CCA) was entering into. There are numerous corporate players involved, and I raised concerns about the ability of CCA to transfer their contract to another entity. The bill now differentiates that construction requires DOC authorization, operation requires nontransferable licensure.

So I guess we need not worry. As long as we have faith in DOC and CCA, or rather Prison Realty Corp., we should be able to rest assured that everything is being handled professionally. After all, any company that filed for a shelf offering for \$1.5 billion worth of stocks and bonds, as CCA did with the FTC last November, has to be reliable.

I'm attaching a press story from the Wall Street Journal from the first of March 1999. Let me read just the first paragraph here- "Prison Realty Corporation will pay \$1.65 million to settle a class-action lawsuit that accused Corrections Corp. of America, one of its predecessor companies, of deficient management practices at a Youngstown, Ohio prison it operated."

I want you to read the entire article, but let me point out additional language in paragraph #4... "Corrections Corp., which didn't admit or deny wrongdoing in court documents filed yesterday, merged with CCA Prison Realty Trust in January to form Prison Realty. The Youngstown prison is now run by Corrections Management Services Corp., a closely held Nashville, TN company that was spun off as part of the merger. A



spokeswoman at Prison Realty, also based in Nashville, said the settlement is expected to have an insignificant impact on the company's earnings.

The REIT was organized to manage facilities owned by other parties. PZN Prison Trust had been a company focused on owning properties and had no opportunity to participate in the management side of the business. The merger was structured so that all of CCA's current management contracts would be placed in a 3<sup>rd</sup> party service subsidiary. Given the large number of potential liability problems the company faced last year, this makes sense.

Post merger, all the economics generated by CCA's owned facilities, its expansion facilities, its management contracts are going to accrue to the benefit of the prison REIT, allowing the entire economics of the CCA organization to flow through the REIT in an untaxed basis.

But why should Montanans worry about prison profiteers and how they operate? I'm sure whomever we agree to license will stay there indefinitely, will remain intact in the corporate takeover world, and not suffer the fate of Magellan or its corporate precursors.

To the specifics of the bill- The Section 18 rewrite seems to fit nicely into whatever is the current Butte privatization scenario. You may recall about this time last year, they were frontrunners in the race with Shelby to get the first private prison up and running. They hit a snag when their proposals to build on the toxic site near the base of the stack in Anaconda fell through, and the Shelby site pulled ahead in the competition. When Shelby's contract was signed, the DOC announced that the Xanopulous Center was being zeroed out for projected future operations.

So I wonder if it is reasonable to read into this section that the state can now negotiate a deal with the Butte private "not-for-profit" prospectors to operate yet another Montana regional correctional facility?

Let me also draw your attention to Section 19 (10) and to Section 22, which deals with Title 46, chapter 19 part 301- the Western Interstate Corrections Compact and 46-19401, the Interstate Corrections Compact. I suggest you read these compacts closely. I also hope you will demand an explanation and clear criteria from DOC as to under what circumstances they will authorize the placement of out of state inmates.

Rulemaking authority- I would urge you to consider amending the bill to see that the minimum applicable standards be those the state entered into in the settlement agreement in the Langford litigation.

Deer Lodge has improved medical and mental health considerably since the agreement was reached, but when the monitors disengage, if we don't nail it down, I am willing to wager that services will backslide to minimal sub-standards. Without linking the quality of care between facilities, Deer Lodge will likely become the medical center prison, creating higher costs for state inmates, lesser medical problems shipped to Glendive, Missoula and Great Falls, or to the private facilities.

FROM : Piper Jaffray  
PZN AA 001/005 M001

PHONE NO. : 7613526

Mar. 08 1999 01:25PM P2

I/HEA I/HOS I/REA G/JUS N/DJN N/DJWI N/JNL N/HIY N/HYL N/LAT N/LWS M/FIN  
M/NCY M/TPX P/DHC P/DRL R/NME R/OH R/TN R/US R/USC R/USS J/SMJ PZN BT//  
03/01 WS WSJ: Prison Concern Agrees To Settle Inmate Lawsuit

By Rick Brooks

Staff Reporter of The Wall Street Journal

AKRON, Ohio -- Prison Realty Corp. will pay \$1.65 million to settle a class-action lawsuit that accused Corrections Corp. of America, one of its predecessor companies, of deficient management practices at a Youngstown, Ohio, prison it operated.

The proposed settlement, tentatively approved yesterday by the U.S. District Court for the Northern District of Ohio, also calls for an employee of the city of Youngstown to monitor the prison full-time to make sure that detailed procedures for safety, medical conditions and prisoner classification are met.

The lawsuit was filed in August 1997, only three months after the 1,700-inmate prison opened in Youngstown. In the lawsuit, inmates shipped to the new prison from the overcrowded District of Columbia prison system alleged that inmates were improperly classified, making it possible for violent offenders to attack other inmates. The lawsuit also alleged that medical care at the Youngstown prison was inadequate and that prison guards used excessive force against inmates. The city of Youngstown joined the lawsuit last March.

Corrections Corp., which didn't admit or deny wrongdoing in court documents filed yesterday, merged with CCA Prison Realty Trust in January to form Prison Realty. The Youngstown prison now is run by Correctional Management Services Corp., a closely held Nashville, Tenn., company that was spun off as part of the merger. A spokeswoman at Prison Realty, also based in Nashville, said the settlement is expected to have an insignificant impact on the company's earnings.

A string of violent incidents at the prison, including two fatal stabbings, was described in a front-page article in The Wall Street Journal in August. Since then, the Ohio Correctional Institution Inspection Committee and a trustee for the Washington, D.C., prison system have called for changes in the Youngstown prison's operations.

About 1,900 inmates held at the prison during the 17 months ended in October are eligible to share in the settlement proceeds. Relatives of seven inmates who died would be allowed to pursue separate lawsuits against the company. A court hearing on the settlement is set for April 20.

(END) DOW JONES NEWS 03-01-99

08:27 PM

# HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 3/9/99

| <u>NAME</u>             | <u>PRESENT</u> | <u>ABSENT</u> | <u>EXCUSED</u> |
|-------------------------|----------------|---------------|----------------|
| Robert C. Clark, chair  | /              |               |                |
| Dan McGee, vice chair   | /              |               |                |
| Diana Wyatt, vice chair | /              |               |                |
| Chris Ahner             | /              |               |                |
| Shiell Anderson         | /              |               |                |
| Paul Clark              | /              |               |                |
| Aubyn A. Curtiss        | /              |               |                |
| Bill Eggers             | /              |               |                |
| Tom Facey               | /              |               |                |
| Steven Gallus           | /              |               |                |
| Gail Gutsche            | /              |               |                |
| Joan Hurdle             | /              |               |                |
| Rick Jere               | /              |               |                |
| Sam Kitzenberg          | /              |               |                |
| Brad Molnar             | /              |               |                |
| Mark Noenning           | /              |               |                |
| Jim Shockley            | /              |               |                |
| Loren Soft              | /              |               |                |
| Carol Williams          | /              |               |                |
| Cindy Younkin           | /              |               |                |
|                         |                |               |                |

284

# MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/9/99

BILL NO. SB 33

SPONSOR(S) Fred Thomas

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)  
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

| TYPE | NAME           | ADDRESS     | REPRESENTING |
|------|----------------|-------------|--------------|
| P    | Rick Day       | Corrections | Corrections  |
| P    | Dave Ohler     | "           | "            |
| P    | Matt Robertson | "           | "            |
| O    | Scott Crumpton | MLU         | Billings     |
|      |                |             |              |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN DAN MCGEE**, on March 19, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Dan McGee, Vice Chairman (R)  
Rep. Diana Wyatt, Vice Chairman (D)  
Rep. Chris Ahner (R)  
Rep. Shiell Anderson (R)  
Rep. Paul Clark (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Jore (R)  
Rep. Sam Kitzenberg (R)  
Rep. Brad Molnar (R)  
Rep. Mark Noennig (R)  
Rep. Jim Shockley (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Robert C. Clark, Chairman (R)

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 473, SB 505, 3/15/1999

Betty Waddell, Montana Association of Churches  
{Tape : 1; Side : A; Approx. Time Counter : 384 - 407}  
Sharon Hoff, Montana Catholic Conference  
{Tape : 1; Side : A; Approx. Time Counter : 407 - 420}  
Ward Shanahan, State Bar  
{Tape : 1; Side : A; Approx. Time Counter : 420 - 426}  
Miriam Luse, Attorney  
{Tape : 1; Side : A; Approx. Time Counter : 426 - 453}  
Penny McPherson, Victim's Advocate  
{Tape : 1; Side : A; Approx. Time Counter : 453 - 550}  
Matt Dale, Friendship Center  
{Tape : 1; Side : B; Approx. Time Counter : 0 - 18}  
Neil Haight, Attorney  
{Tape : 1; Side : B; Approx. Time Counter : 18 - 45}

EXHIBIT(3)

Opponents:

Jeff Koch, Montana Collector's Association  
{Tape : 1; Side : B; Approx. Time Counter : 45 - 111}

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 111 - 428}

Closing by Sponsor:

Senator Grimes made closing statements.

{Tape : 1; Side : B; Approx. Time Counter : 428 - 550}

EXECUTIVE ACTION ON SB 33

Motion: REP. CURTISS moved that SB 33 BE CONCURRED IN.

Discussion: After much discussion, ( 3 pages worth of notes)  
(2 tapes) Vote taken: 10-10 with Rep. Wyatt, P. Clark, Eggers,  
Facey, Gutsche, Hurdle, Kitzenberg, Noennig, Soft and Williams  
voting no. Reversed vote and TABLED SB 33.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 550}

# HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 3/19/99

| <u>NAME</u>               | <u>PRESENT</u> | <u>ABSENT</u> | <u>EXCUSED</u> |
|---------------------------|----------------|---------------|----------------|
| Robert C. Clark, chair    |                |               | ✓              |
| Dan McGee, vice chair     | ✓              |               |                |
| Diana Wyatt, vice chair   | ✓              |               |                |
| Chris Ahner               | ✓              |               |                |
| Shiell Anderson           | ✓              |               |                |
| Paul Clark                | ✓              |               |                |
| Aubyn A. Curtiss          | ✓              |               |                |
| Bill Eggers               | ✓              |               |                |
| Tom Facey                 | ✓              |               |                |
| Steven Gallus             | ✓              |               |                |
| Gail Gutsche              | ✓              |               |                |
| Joan Hurdle               | ✓              |               |                |
| Rick Jore                 | ✓              |               |                |
| Sam Kitzenberg            | ✓              |               |                |
| <del>Sam Kitzenberg</del> | ✓              |               |                |
| Brad Molnar               | ✓              |               |                |
| Mark Noenning             | ✓              |               |                |
| Jim Shockley              | ✓              |               |                |
| Loren Soft                | ✓              |               |                |
| Carol Williams            | ✓              |               |                |
| Cindy Yountkin            | ✓              |               |                |
|                           |                |               |                |

COMMITTEE FILE COPY

TABLED BILL

The HOUSE JUDICIARY COMMITTEE TABLED SB 33, SB 320, by motion, on Friday, March 19, 1999.



(For the Committee)



(Chief Clerk of the House)

12:25

(Time)

3-19

(Date)

March 19, 1999

Pam E. Schindler, Secretary

Phone: 444-4788



## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

**Call to Order:** By CHAIRMAN ROBERT C. CLARK, on March 26, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

#### ROLL CALL

**Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Dan McGee, Vice Chairman (R)  
Rep. Diana Wyatt, Vice Chairman (D)  
Rep. Shiell Anderson (R)  
Rep. Paul Clark (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Bill Eggers (D)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Jore (R)  
Rep. Sam Kitzenberg (R)  
Rep. Brad Molnar (R)  
Rep. Mark Noennig (R)  
Rep. Jim Shockley (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** Rep. Chris Ahner (R)

**Staff Present:** John MacMaster, Legislative Branch  
Pam Schindler, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:

Executive Action: SB-477-Be Concurred in, SB  
481-Be Concurred in, SB 486-Be

EXECUTIVE ACTION ON SB 33

Motion: REP. SHOCKLEY moved SB 33-RECONSIDER AND REMOVE FROM TABLED STATUS. MOTION PASSED with 11-8 vote. Reps. Williams, Facey, Gallus, Eggers, Hurdle, Younkin, Gutsche, P. Clark voting no.

(Rep. Ahner absent)

Motion: REP. SHOCKLEY moved that SB 33 BE CONCURRED IN.

Motion/Vote: REP. KITZENBERG moved that SB 33 BE AMENDED. Motion failed 4-15 on a hand vote.

(Rep. Ahner absent)

Motion/Vote: REP. SHOCKLEY moved that SB 33 BE CONCURRED IN.

Motion carried 10-9 with P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Williams, and Wyatt voting no.

(Rep. Ahner absent)

{Tape : 4; Side : A; Approx. Time Counter : 28 - 406}

EXECUTIVE ACTION ON SB 36

Motion: REP. SOFT moved SB 36-TO RECONSIDER AND REMOVE FROM TABLED STATUS.

EXHIBIT(3)

MOTION PASSES TO RECONSIDER.

Motion: REP. SOFT moved that SB 36 BE CONCURRED IN.

Motion: REP. SOFT moved that SB 36 BE AMENDED.

MOTION PASSES ON A VOICE VOTE.

Motion/Vote: REP. SOFT moved that SB 36 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with REPS. HURDLE, JORE, MCGEE voting no.

(Rep. Ahner and Kitzenberg absent)

{Tape : 4; Side : A; Approx. Time Counter : 406 - 550}

{Tape : 4; Side : B; Approx. Time Counter : 0 - 156}

Meeting adjourned.

# HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 3/26/99

| <u>NAME</u>             | <u>PRESENT</u> | <u>ABSENT</u> | <u>EXCUSED</u> |
|-------------------------|----------------|---------------|----------------|
| Robert C. Clark, chair  | /              |               |                |
| Dan McGee, vice chair   | /              |               |                |
| Diana Wyatt, vice chair | /              |               |                |
| Chris Ahner             |                | /             |                |
| Shiell Anderson         | /              |               |                |
| Paul Clark              | /              |               |                |
| Aubyn A. Curtiss        | /              |               |                |
| Bill Eggers             | /              |               |                |
| Tom Facey               | /              |               |                |
| Steven Gallus           | /              |               |                |
| Gail Gutsche            | /              |               |                |
| Jean Hurdle             | /              |               |                |
| Rick Jore               | /              |               |                |
| Sam Kitzenberg          | /              |               |                |
| Brad Molnar             | /              |               |                |
| Mark Noenning           | /              |               |                |
| Jim Shockley            | /              |               |                |
| Loren Soft              | /              |               |                |
| Carol Williams          | /              |               |                |
| Cindy Yourkin           | /              |               |                |
|                         |                |               |                |

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

HOUSE JUDICIARY

~~X~~SUBCOMMITTEE

DATE 3/26/99

BILL NO. \_\_\_\_\_

NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

SB 33- DoCenem

Panes

| NAME                    | AYE | NO |
|-------------------------|-----|----|
| ROBERT CLARK, CHAIRMAN  | /   |    |
| DAN MC GEE, VICE CHAIR  | /   |    |
| DIANA WYATT, VICE CHAIR | /   |    |
| CHAIR AHNER             | /   |    |
| SHEILL ANDERSON         | /   |    |
| PAUL CLARK              | /   |    |
| AUBYN CURTISS           | /   |    |
| BILL EGGERS             | /   |    |
| TOM FACEY               | /   |    |
| STEVE GALLUS            | /   |    |
| GAIL GUTSCHE            | /   |    |
| JOAN HURDLE             | /   |    |
| RICK JORE               | /   |    |
| SAM KITZENBERG          | /   |    |
| BRAD MOLNAR             | /   |    |
| MAKR NOENNING           | /   |    |
| JIM SHOCKLEY            | /   |    |
| LOREN SOFT              | /   |    |
| CAROL WILLIAMS          | /   |    |
| CINDY YOUNKIN           | /   |    |

10 9



## HOUSE STANDING COMMITTEE REPORT

March 26, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** report that Senate **Bill 33** (third reading copy -- blue) be concurred in.

Signed: Robert C. Clark  
Representative Robert C. Clark, Chair

To be carried by Representative Sam Kitzenberg

- END -

Committee Vote:  
Yes 10, No 9.

681412SC.ham

Sp  
3/30/99

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 3/26/99

I request to be excused from the House Judiciary  
Committee meeting this date because of other commitments. I desire  
to leave my proxy vote with Clark, Scott.

*Vote w/ Clark - Shackley*

Indicate Bill Number and your vote Aye or No. If there are  
amendments, list them by name and number under the bill and  
indicate a separate vote for each amendment.

| HOUSE BILL/AMENDMENT | AYE                                 | NO                                  |
|----------------------|-------------------------------------|-------------------------------------|
| SB. 477              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| SB 481               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 486               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 503               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| SB 505               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| SB 463               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 473               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 198               | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| SB 33                | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 22                | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| SB 36                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

| SENATE BILL/AMENDMENT | AYE                      | NO                       |
|-----------------------|--------------------------|--------------------------|
|                       | <input type="checkbox"/> | <input type="checkbox"/> |
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|                       | <input type="checkbox"/> | <input type="checkbox"/> |

Rep. *McL...*  
(Signature)

**HOUSE OF REPRESENTATIVES**  
**COMMITTEE PROXY**  
JUDICIARY COMMITTEE

DATE 3/26/99

I request to be excused from the HOUSE JUDICIARY  
Committee meeting this date because of other commitments. I desire  
to leave my proxy vote with REP JORE.

Indicate Bill Number and your vote Aye or No. If there are  
amendments, list them by name and number under the bill and  
indicate a separate vote for each amendment.

| HOUSE BILL/AMENDMENT | AYE | NO |
|----------------------|-----|----|
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| SENATE BILL/AMENDMENT | AYE | NO |
|-----------------------|-----|----|
| 22                    | X   |    |
| 33                    | X   |    |
| 34                    | X   |    |
|                       |     |    |
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Rep. Robert Clark  
(Signature)

HR:1993  
WP/PROXY

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE March 26, 1999

I request to be excused from the Judiciary  
Committee meeting this date because of other commitments. I desire  
to leave my proxy vote with Rep. Clark.

Indicate Bill Number and your vote Aye or No. If there are  
amendments, list them by name and number under the bill and  
indicate a separate vote for each amendment.

| HOUSE BILL/AMENDMENT | AYE | NO |
|----------------------|-----|----|
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| SENATE BILL/AMENDMENT      | AYE | NO  |
|----------------------------|-----|-----|
| 477                        |     | X   |
| 481                        |     | X   |
| with Mdhar on Amends - 486 | X   | (X) |
| 503                        |     | X   |
| 505                        |     | X   |
| 463                        | X   |     |
| 473                        | X   |     |
| 198                        |     | X   |
| 22                         |     | X   |
| 33                         | (X) |     |
| 36                         |     | X   |

Rep. Rick Jones  
(Signature)



# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE \_\_\_\_\_

I request to be excused from the finaling  
Committee meeting this date because of other commitments. I desire  
to leave my proxy vote with Chad.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

| HOUSE BILL/AMENDMENT | AYE | NO |
|----------------------|-----|----|
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| SENATE BILL/AMENDMENT                                   | AYE | NO |
|---------------------------------------------------------|-----|----|
| 503                                                     |     | X  |
| 33                                                      | ✓   |    |
| 36                                                      | ✓   |    |
| <del>22</del> <u>Holloman</u>                           |     |    |
| <del>22</del> <u>Mr. Holloman</u>                       |     |    |
| <u>Only if amendment to include only prison guards.</u> |     |    |
| 22                                                      | ✓   |    |

Rep. Molnar  
(Signature)

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**FREE CONFERENCE ON SB 33**

**Call to Order:** By **SENATOR FRED THOMAS**, on April 13, 1999 at  
10:07 A.M., in Room 402 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Fred Thomas  
Sen. Steve Doherty  
Sen. Lorents Grosfield  
Rep. Steve Vick  
Rep. Edith Clark  
Rep. Red Menahan

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Phoebe Olson, Secretary  
Valencia Lane, Legislative Services Division

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Free Conference Committee on SB 33

**SENATOR THOMAS**, opened the meeting.

**REPRESENTATIVE MENAHAN**, said he would like to leave the bill as it was.

**SENATOR THOMAS**, said he was concerned with the language that precluded any out-of-state prisoners being sent to any private prison.

**REPRESENTATIVE MENAHAN**, said he was not opposed to putting language in that said "other than state facilities".

**SENATOR THOMAS** said it may be possible to say "any private facility authorized as of today".

**REPRESENTATIVE VICK**, said he thought the House did not want out-of-state inmates in any private prison.

**SENATOR THOMAS**, explained the discussion to those who arrived late.

**REPRESENTATIVE VICK**, said they had put an amendment on a similar bill last session before they even knew where the prison would be built.

**REPRESENTATIVE MENAHAN**, said he wouldn't want to stop someone from starting a prison and bringing in federal prisoners that are not within the state system.

**Rick Day, Department of Corrections**, said this wouldn't apply to a federal prison.

**SENATOR THOMAS** asked if under the current language it meant that an individual that was convicted in Federal Court in Montana could not go to a private prison in Montana.

**Rick Day**, said that was correct.

**SENATOR THOMAS** asked if they wanted to bar any other private facility from accepting out of state prisoners. He also was curious if they wanted a Montanan convicted by Federal Court not to be able to be placed in a private institution in Montana.

**REPRESENTATIVE CLARK**, said her intention was to have the language stipulate a prisoner tried and convicted in Montana for a crime committed in Montana. She did not specify state or federal.

**SENATOR THOMAS**, clarified that the intent was someone not convicted in Montana could not be placed in a private institution.

**REPRESENTATIVE MENAHAN**, asked Rick Day if someone in Montana was convicted in Federal Court if they could contact him to be placed in one of the state facilities, under this bill.

**Rick Day**, replied they could.

**REPRESENTATIVE MENAHAN**, said there might be more information if this was brought up next session.

**SENATOR THOMAS**, asked about adding "in another state" after the words Federal Court.

**REPRESENTATIVE VICK**, asked what sort of impact that amendment would have.

**Rick Day**, said if that change were made it would restrict them to people either charged or convicted in Montana.

**SENATOR THOMAS**, asked how it worked know with someone who was convicted of a federal crime. He wondered where they were housed before and after conviction.

**Dave Culver**, said the were housed in county jail prior to trial and following trial they would be there for a short period of time until transportation was arranged for them to go to a federal prison some place in the United States. He said if a prisoner wanted to come back to Montana after the had gone to federal prison they could talk to their counselor to arrange a trade.

**SENATOR THOMAS**, said he would feel better if the language "in another state" was put in.

**REPRESENTATIVE MENAHAN**, said he would support that amendment.

**REPRESENTATIVE VICK**, asked if this said charged or convicted in another state, if that meant the court was in another state or the crime was committed in another state.

**SENATOR THOMAS**, said if they were charged in a Federal Court in another state or convicted in a Federal Court in another state.

**SENATOR GROSFIELD**, made sure he was clear on the issue. It seemed to him that the issue was if they wanted to close off the option of any transfer of any prisoner to a private correctional facility in Montana. He did not think it was economically responsible to close off that option.

**Valencia Lane**, explained some technical amendment that should be adopted.

**Motion/Vote:** **REPRESENTATIVE MENAHAN** made a motion that **SENATOR THOMAS' SUGGESTED AMENDMENT DO PASS, carried unanimously.**

**SENATOR GROSFIELD**, made a motion to strip the House amendments, but after some discussion withdrew the motion and made a substitute motion to put in an applicability date.

**SENATOR VICK**, said he would run into problems in the House if he did that.

**Valencia Lane**, didn't think an applicability date was a good way to solve the problem.

**SENATOR GROSFIELD**, withdrew his motion.

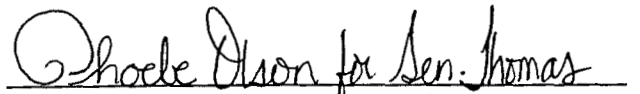
**Valencia Lane**, suggested some technical amendments.

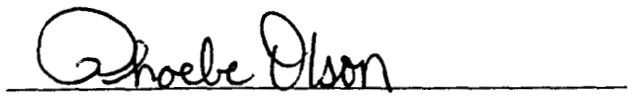
**Motion/Vote:** **SENATOR DOHERTY**, moved **VALENCIA'S SUGGESTED AMENDMENTS. MOTION CARRIED UNANIMOUSLY.**

**Motion:** **REP. VICK** moved that **SB 33 DO PASS AS AMENDED. Motion carried with Sen. Grosfield voting no.**

ADJOURNMENT

Adjournment: 10:42 A.M.

  
SEN. FRED THOMAS, Chairman

  
PHOEBE OLSON, Secretary

BC/



# FREE CONFERENCE COMMITTEE

on Senate Bill 33

Report No. 1, April 13, 1999

Page 1 of 2

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 33** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Fred Thom  
Chair

Sen. Grosfield  
DL Doherty

J. Fossum  
Amendment Coordinator

Rosana Skelton  
Secretary of Senate

For the House:

St. Uhl  
Chair

Edith J. Clark

Wm. Menasha

And, recommend that **Senate Bill 33** (reference copy -- salmon) be amended as follows:

1. Page 16, line 15.  
Following: "facility"  
Insert: "in this state"

2. Page 16, line 18.  
Following: "facility"  
Insert: "in this state"

ADOPT

REJECT

FCCR #1  
SB 33

AC SB 33-1

801346FC.srf

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21

3. Page 16, line 21.  
Following: "court"  
Insert: "in another state"

4. Page 16, line 22.  
Following: "~~state~~"  
Insert: "in this state"

5. Page 17, line 24.  
Following: "facility"  
Insert: "in this state"

6. Page 17, line 26.  
Following: "facility"  
Insert: "in this state"

7. Page 17, line 27.  
Following: "court"  
Insert: "in another state"

8. Page 17, line 28.  
Following: "facility"  
Insert: "in this state"

- END -





AN ACT GENERALLY REVISING LAWS GOVERNING PRISONS AND PRISONERS; CLARIFYING THAT A PRIVATE PRISON FACILITY LICENSED BY THE DEPARTMENT OF CORRECTIONS IS A STATE PRISON; CLARIFYING THE PROCEDURE FOR THE ISSUANCE OF A LICENSE TO A PRIVATE PRISON FACILITY; CLARIFYING THE DEFINITION OF "REGIONAL CORRECTIONAL FACILITY"; CLARIFYING THAT PRIVATELY OPERATED OR PRIVATELY OWNED AND OPERATED REGIONAL CORRECTIONAL FACILITIES ARE SUBJECT TO DEPARTMENT AUTHORIZATION AND LICENSURE; CLARIFYING THAT A PRIVATE PRISON MAY HOUSE ONLY INMATES CHARGED OR CONVICTED IN MONTANA; CLARIFYING THAT FOR PURPOSES OF DETERMINING AGGRAVATING CIRCUMSTANCES IN CRIMINAL CASES CERTAIN CRIMES COMMITTED IN FACILITIES OTHER THAN THE STATE PRISON IN DEER LODGE APPLY; AMENDING SECTIONS 1-1-207, 19-8-301, 45-8-318, 46-18-220, 46-18-303, 46-19-103, 46-23-201, 46-23-215, 46-23-217, 53-1-102, 53-1-103, 53-1-104, 53-1-108, 53-1-202, 53-30-101, 53-30-132, 53-30-151, 53-30-503, 53-30-504, 53-30-507, 53-30-602, 53-30-603, AND 87-2-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-1-207, MCA, is amended to read:

"1-1-207. **Miscellaneous terms.** ~~(1)~~ Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

~~(a)~~ (1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person's action, vote, or opinion in any public or official capacity.

~~(b)~~ "Montana state prison" means the Montana state prison as defined in 53-30-101(3)(b).

~~(c)~~ (2) "Peace officer" has the meaning as defined in 46-1-202.

~~(d)~~ "State prison" or "prison" means:

- ~~\_\_\_\_\_ (ii) the Montana state prison as described in 53-30-101(1);~~
- ~~\_\_\_\_\_ (iii) the Montana women's prison as defined in 53-30-101(3)(c);~~
- ~~\_\_\_\_\_ (iii) a Montana regional correctional facility;~~
- ~~\_\_\_\_\_ (iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or~~
- ~~\_\_\_\_\_ (v) a combination of the facilities listed in this subsection (1)(d).~~

~~(e)(3) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.~~

~~(2) Subsections (1)(b) and (1)(d) do not authorize a court to sentence a person to a correctional facility listed in those subsections."~~

Section 2. Section 19-8-301, MCA, is amended to read:

**"19-8-301. Membership -- inactive vested members -- inactive nonvested members. (1)** Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

- (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
- (b) motor carrier officers employed by the department of transportation;
- (c) campus security officers employed by the university system;
- (d) ~~the warden wardens~~ and deputy wardens ~~of the state prison system~~ employed by the department of corrections;
- (e) corrections officers employed by the department of corrections;
- (f) probation and parole officers employed by the department of corrections;
- (g) stock inspectors and detectives employed by the department of livestock;
- (h) motor vehicle inspectors employed by the department of justice; and
- (i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the

right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 3.** Section 45-8-318, MCA, is amended to read:

**"45-8-318. Possession of deadly weapon by prisoner or youth in facility.** (1) A person commits the offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon while the person is:

(a) a person committed to ~~the Montana~~ a state prison or incarcerated in a county jail, city jail, or regional jail and is:

- (i) at ~~the~~ a state prison, a state prison farm or ranch, or jail;
- (ii) being conveyed to or from a place listed in this subsection (1)(a); or
- (iii) under the custody of prison or jail officials, officers, or employees; or

(b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.

(2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more than \$50,000, or by both fine and imprisonment.

(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in district court, in which case the district court has jurisdiction."

**Section 4.** Section 46-18-220, MCA, is amended to read:

**"46-18-220. Sentences for certain offenses committed in state prison -- death penalty.** A person

serving a sentence of imprisonment in ~~the~~ a state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at ~~the~~ a state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

**Section 5.** Section 46-18-303, MCA, is amended to read:

**"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in ~~the~~ a state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation that, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in 45-5-102 (1)(a), and the victim was a peace officer killed while performing the officer's duty.

(7) The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at ~~the~~ a state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

(10) The offense was sexual intercourse without consent and the defendant has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another

state or of the United States that if committed in this state would be the offense of sexual intercourse without consent and the defendant inflicted serious bodily injury upon a person in the course of committing each offense."

**Section 6.** Section 46-19-103, MCA, is amended to read:

**"46-19-103. Execution of death sentence.** (1) In pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~a~~ the Montana state prison or the Montana women's prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or the warden's designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and

training of the executioner must remain confidential.

(6) An execution must be performed by a person selected by the warden and trained to administer a lethal injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden shall allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time it was executed."

**Section 7.** Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in ~~the Montana a state prison or the women's prison~~, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

**Section 8.** Section 46-23-215, MCA, is amended to read:

"**46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the ~~correctional facility from which the prisoner was released~~ department but is subject to the orders of the board.

(2) When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in ~~the Montana~~ a state prison or the Montana women's prison has been approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the ~~warden~~ department may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the ~~prison~~ department and is subject to all other conditions recited by the board."

**Section 9.** Section 46-23-217, MCA, is amended to read:

"**46-23-217. Service of term for additional crime.** A prisoner who commits a crime while imprisoned in ~~the~~ a state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence."

**Section 10.** Section 53-1-102, MCA, is amended to read:

"**53-1-102. Removal of patients from state custodial institutions or correctional facilities without permission a misdemeanor.** (1) A person, other than a parent or one having legal custody of a patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution or correctional facility to leave the institution or facility without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding \$500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ state prison."

Section 11. Section 53-1-103, MCA, is amended to read:

"53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions or correctional facilities a misdemeanor. (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution or correctional facility without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county ~~ja~~ detention facility not exceeding 6 months or by a fine not exceeding \$500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ state prison."

Section 12. Section 53-1-104, MCA, is amended to read:

"53-1-104. Release of arsonist -- notification of department of justice. (1) Each of the following institutions, correctional facilities, or other facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice when the person is admitted or released by it:

- (a) Montana state hospital;
- (b) a ~~Montana~~ state prison;
- (c) a Montana youth correctional facility; or
- (d) a county or city detention facility.
- (2) The notification must disclose:
  - (a) the name of the person;
  - (b) where the person is or will be located; and
  - (c) the type of fire the person was involved in."

Section 13. Section 53-1-108, MCA, is amended to read:

"53-1-108. Inmate financial disclosure and account monitoring. (1) Upon incarceration at ~~the Montana~~ a state prison in Deer Lodge or the women's prison in Billings, an inmate shall:

- (a) make full disclosure of all the inmate's accounts in financial institutions to the department of corrections in writing and under oath;



(b) sign a release authorizing any financial institution in which the inmate has an account of any kind to provide the department with copies of records of any transaction in the account during the inmate's term of incarceration in the prison or correctional system. Released copies of records are confidential criminal justice information as defined in 44-5-103.

(c) sign a release authorizing the department to monitor any inmate account in a financial institution.

(2) Failure of an inmate to disclose information under subsection (1)(a) or sign a release under subsection (1)(b) or (1)(c) is an offense under 45-7-302."

**Section 14.** Section 53-1-202, MCA, is amended to read:

**"53-1-202. (Temporary) Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs ~~to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:~~

(a) ~~the Montana state prison~~ prisons listed in 53-30-101;

~~(b) the Montana women's prison; and~~

~~(c)(b)~~ appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the

consent of the legislature.

**53-1-202. (Effective on occurrence of contingency) Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs ~~to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:~~

(a) ~~the Montana state prison~~ prisons listed in 53-30-101;

~~(b) the Montana women's prison;~~

~~(c)~~ (b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

**Section 15.** Section 53-30-101, MCA, is amended to read:

**"53-30-101. Location and function of prisons -- definitions.** (1) The correctional facility at Deer Lodge is the Montana state prison and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders. ~~The custody, treatment, training, and rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction~~

~~pursuant to an agreement as provided in 53-30-106.~~

(2) The correctional facility located in Billings is the Montana women's prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders.

(3) As used in this title, unless the context indicates otherwise, the following definitions apply:

(a) "Montana state prison" means the correctional facility located at Deer Lodge.

(b) "Montana women's prison" or "women's prison" means the correctional facility located at Billings.

~~(a)~~(c) "Montana State prison" means:

(i) the Montana state prison;

(ii) the Montana women's prison;

(iii) a state correctional facility portion of a Montana regional correctional facility;

(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or

(v) a private correctional facility licensed by the department of corrections or a private correctional facility portion of a Montana regional correctional facility licensed by the department of corrections; or

~~(v)~~(vi) a combination of the facilities listed in this subsection (3)(a)(c).

~~(b) "Montana state prison" means:~~

~~(i) the correctional facility located at Deer Lodge;~~

~~(ii) a Montana regional correctional facility; or~~

~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.~~

~~(c) "Montana women's prison" or "women's prison" means:~~

~~(i) the correctional facility located at Billings;~~

~~(ii) a Montana regional correctional facility; or~~

~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106."~~

Section 16. Section 53-30-132, MCA, is amended to read:

**"53-30-132. Inmate participation and status in prison work programs -- prison industries and vocational training program -- wages and benefits.** (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any

state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

- (iii) physical effort;
- (iv) responsibility for equipment and materials; and
- (v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a ~~Montana~~ state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

**Section 17.** Section 53-30-151, MCA, is amended to read:

"**53-30-151. Prison maintenance by inmates.** An inmate of a ~~Montana~~ state prison may be required to:

- (1) keep the living quarters assigned to that inmate clean and orderly;
- (2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services."

**Section 18.** Section 53-30-503, MCA, is amended to read:

**"53-30-503. Definitions.** As used in this part, the following definitions apply:

- (1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.
- (2) "Department" means the department of corrections.
- (3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.
- (4) "Local governmental entity" means:
  - (a) a local governmental unit;
  - (b) a multijurisdictional service district; or
  - (c) an interlocal cooperation commission.
- (5) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.
- (6) "Regional correctional facility" means a ~~correctional facility, except the Montana state prison, the women's prison, or the Swan River boot camp,~~ for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department ~~for the housing of convicted felons.~~

**Section 19.** Section 53-30-504, MCA, is amended to read:

**"53-30-504. Authority to enter into contracts -- terms -- financing.** (1) The department may contract with one or more local governmental entities or corporations for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department.

(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity or the corporation, whichever is party to the contract.

The contract must set forth fully the purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) The department may not enter into a contract unless the department and the local governmental entity or corporation has the legal authority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property that is owned by the state of Montana, a local governmental entity, or a corporation or that is jointly owned.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may be used, in whole or in part, to construct a regional correctional facility that may be owned and operated by a local governmental entity, whether or not the facility or any part of it is to be owned and operated by the state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in whole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide that the local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and approval of the plans and specifications for the facility prior to the time the facility is let to bid.

(7) The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local governmental entities, corporations, or private providers to obtain the greatest number of beds that is consistent with program objectives for the least cost to the state.

(8) An individual, corporation, partnership, association, or other private organization or entity may not construct a regional correctional facility in this state, if privately operated or privately owned and operated, unless authorized by the department.

(9) An individual, corporation, partnership, association, or other private organization or entity may not operate a regional correctional facility in this state unless licensed by the department. A license is nontransferable.



~~(8)(10)~~ A regional correctional facility may house persons who are charged or convicted in this state, another state, or federal court in the detention center portion of a regional correctional facility. A person charged or convicted in another state or charged or convicted in federal court in another state may not be confined in the a state correctional facility portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4, and the department authorizes the placement of the person in the state correctional facility portion of the regional correctional facility."

Section 20. Section 53-30-507, MCA, is amended to read:

"53-30-507. Rulemaking authority. The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site, the department shall consider the need for a regional correctional facility in the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation. The department shall adopt rules that include the minimum applicable standards for the construction, operation, and physical condition of a state correctional facility portion of a regional correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of a regional correctional facility. The rules must require that a privately operated or privately owned and operated state correctional facility portion of a regional correctional facility conform to applicable American correctional association and national commission on correctional health care standards."

Section 21. Section 53-30-602, MCA, is amended to read:

"53-30-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. ~~The term includes a regional correctional facility, as defined in~~

~~53-30-503, if privately operated or privately owned and operated.~~

(b) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22."

Section 22. Section 53-30-603, MCA, is amended to read:

"53-30-603. **Private correctional facilities -- confinable persons.** (1) An individual, corporation, partnership, association, or other private organization or entity may not construct ~~or operate~~ a private correctional facility in this state unless licensed authorized by the department. ~~A license is nontransferable.~~

(2) An individual, corporation, partnership, association, or other private organization or entity may not operate a private correctional facility in this state unless licensed by the department. A license is nontransferable.

~~(2)(3) A person charged or convicted in another state or charged or convicted in federal court in another state may not be confined in the portion of a private correctional facility in this state that is used for the incarceration of convicted felons for a term of over 1 year unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~

Section 23. Section 87-2-802, MCA, is amended to read:

"87-2-802. **Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, personal care facilities, and community homes for persons with disabilities.** (1) Any veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all ~~correctional facilities and~~ institutions under the jurisdiction of ~~the department of corrections and~~ the department of public health and human services; ~~except the Montana state prison at Deer Lodge or the Montana women's prison,~~ may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and personal care facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed

under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."

**Section 24. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 25. Effective date.** [This act] is effective on passage and approval.

**Section 26. Retroactive applicability.** The amendments to 53-30-603 apply retroactively, within the meaning of 1-2-109, to all occurrences on or after July 1, 1998.

- END -